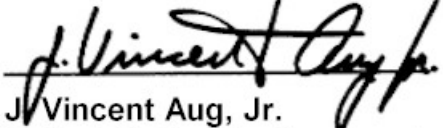


This document has been electronically entered in the records of the United States Bankruptcy Court for the Southern District of Ohio.

IT IS SO ORDERED.

Dated: October 13, 2005

  
J. Vincent Aug, Jr.  
United States Bankruptcy Judge

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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT  
WESTERN DIVISION**

In re  
Michelle Booher

Debtor

Case No. 04-18058  
Chapter 7 (Judge Aug)

Rachel Meyers, et al.,  
Plaintiffs

Adv. No. 05-1018

v.  
Michelle Booher,  
Defendant

**ORDER DENYING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

This matter is before the Court on Plaintiffs Rachel Meyers, Beverly Meyers, and Gregory Meyers' motion for summary judgment (Doc. 14), Debtor-Defendant Michelle Booher's response (Doc. 18), and the Plaintiffs' reply (Doc. 19).

The Court has jurisdiction over this matter pursuant to 28 U.S.C. §1334 and the general order of reference entered in this district. This is a core proceeding

under 28 U.S.C. §157(b)(2)(I).

The issue before the Court is whether preclusion applies in this adversary proceeding arising under 11 U.S.C. §523(a)(6) with regard to a state court judgment.

This adversary proceeding results from the unfortunate facts as alleged in a previous state court action brought by Rachel Meyers and her parents, Beverly and Gregory Meyers, against Aaron Booher and Michelle Booher. It is alleged in the state court complaint that during the summer of 2000, Aaron Booher, the Debtor's then-husband, who owned and operated a pet store, enticed Rachel Meyers, an employee and a minor, to run away from home. It is further alleged in the state court complaint that Aaron Booher seduced Rachel Meyers with alcohol, drugs, and money so that he could have a sexual relationship with her. It is further alleged in the state court complaint that Michelle Booher harbored Rachel Meyers from her parents. The state court complaint contained multiple counts: child stealing under O.R.C. §2307.50, person injured by criminal act under O.R.C. §2307.60, violation of the Ohio civil rights act under O.R.C. §4112.99, public policy tort, infliction of emotional distress, and loss of filial consortium. The state court complaint characterized Aaron and Michelle Booher's conduct as "negligent, wanton, reckless or intentional." Doc. 1, Ex. A, ¶37.

The Meyers obtained a default judgment against Aaron Booher.

With regard to Michelle Booher, the Meyers allege in their complaint filed in this Court that a bench trial was held in state court on or about February 27, 2004. The state court judgment, *see infra*, recites that a bench trial was held. However, the state court docket does not reflect that a trial of any kind was held on February 27, 2004 or on any other date.<sup>1</sup> The state court docket indicates that Michelle Booher's deposition was designated on March 1, 2004 and filed on March 2, 2004. Curiously, the state court docket indicates that the Meyers' closing argument against Michelle Booher was filed on March 1, 2004, that Michelle Booher's closing argument was filed on March 25, 2004, that the Meyers' rebuttal closing argument was filed on April 1, 2004.<sup>2</sup> This Court is unfamiliar with this

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<sup>1</sup> The state court docket indicates only that a notice of dismissal as to certain other defendants was entered on February 27, 2004.

<sup>2</sup> Because the closing arguments are not part of the record in this case, we do not know what defenses Michelle Booher may have raised. In her affidavit filed in this case,

type of "paper trial" proceeding. In any event, it does not appear that an actual hearing was ever held.

The state court entry of judgment against Michelle Booher states in its entirety:

After a bench trial and having considered all the evidence in this case, including the deposition of Michelle Booher and written closing arguments, this Court grants judgment to the Plaintiffs against Michelle Booher on all claims as follows:

To Rachel Meyers, a judgment of \$500 for compensatory damages.

To Beverly and Gregory Meyers jointly, a judgment of \$9,500.00 in compensatory damages and \$10,000 in punitive damages.

Along with Defendant Aaron Booher, Michelle Booher shall be jointly liable to pay \$20,000 to plaintiffs for their reasonable attorney fees.

The Court hereby enters judgment of \$40,000 against Defendant Michelle Booher. All Court Costs shall be assessed against Michelle Booher.

IT IS SO ORDERED.

In addition to the civil action, certain criminal charges were brought against Aaron Booher to which he pled guilty. No criminal charges were brought against Michelle Booher.

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Michelle Booher asserts that she was not involved in Rachel Meyers' decisions to run away and that she allowed Rachel Meyers to stay in a family cabin for one night because Rachel claimed that her father had been abusing her. Michelle Booher also states in her affidavit that she had no idea her then-husband was having an affair with Rachel Meyers until he was criminally charged for his actions.

Michelle Booher filed her Chapter 7 petition on October 7, 2004. This adversary proceeding was commenced on January 11, 2005.

The Meyers contend that because the state court judgment includes an award of punitive damages, that Michelle Booher's acts were necessarily found by the state court to be outrageous, flagrant, and criminal. The Meyers further contend that the principle of preclusion applies to estop Michelle Booher from challenging the Meyers' allegations in this adversary proceeding that her acts were willful and malicious under 11 U.S.C. §523(a)(6).

For preclusion to apply, the precise issue must have been raised in the prior state court proceeding, the issue must have been actually litigated, and the determination must have been necessary to the outcome. *In re Moffitt*, 252 B.R. 916, 921 (B.A.P. 6th Cir. 2000)(citations omitted).

Assuming, *arguendo*, that the issues of willfulness and maliciousness were actually litigated in state court, we conclude that the Meyers' motion for summary judgment must be denied for the following reasons.

With regard to Rachel Meyers' nondischargeability claim under §523(a)(6) and her assertion of preclusion, it is important to note that Rachel Meyers did not obtain an award of punitive damages against Michelle Booher. Therefore, as to Rachel Meyers, the state court judgment has no preclusive effect against Michelle Booher.

With regard to Beverly and Gregory Meyers' nondischargeability claim under §523(a)(6) and their assertion of preclusion, we generally find Michelle Booher's response (Doc. 18) to be well-taken and hereby adopt same. We recognize that in the majority of cases, an award of punitive damages by a state court indicates a finding of malice. *See e.g., In re Moffitt*, 252 B.R. at 923. However, in some cases, an award of punitive damages does not always denote that a person's conduct was willful for purposes of §523(a)(6). *In re Robinson*, 242 B.R. 380, 387-88 (Bankr. N.D. Ohio 1999). The state court judgment against Michelle Booher does not specify the basis for the award of punitive damages. It is likely that the punitive damage award was based on interference with custody of a minor which can be premised upon reckless behavior or simply lack of privilege. Reckless behavior is not actionable under §523(a)(6). *Kawaauhau v. Geiger*, 523 U.S. 57 (1988). Nor does the state court judgment make an actual finding of willfulness or maliciousness on the part of Michelle Booher. Both willfulness and

maliciousness must be proven under §523(a)(6).

Accordingly, we hereby DISMISS the Plaintiffs' motion for summary judgment.

This matter will be set for trial by separate order.

IT IS SO ORDERED.

Distribution list:

Susan Clifffel, Esq.  
Howard Levy, Esq.  
U.S. Trustee

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